

**CHAPTER NO. 949**

**HOUSE BILL NO. 3049**

**By Representatives Ford, Wood, Baird, Montgomery, Buttry, Walker**

**Substituted for: Senate Bill No. 3122**

**By Senator Haun**

AN ACT to amend Tennessee Code Annotated, Title 54, Chapter 16, relative to the accommodation of underground fiber optic cable lines and related facilities within the rights-of-way of controlled-access highways on the state highway system and/or the federal interstate highway system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 54, Chapter 16, Part 1, is amended by adding the following language as a new, appropriately designated section:

54-16-1\_\_\_. Underground Fiber Optic Cable Facilities.

(a) The Department of Transportation may issue non-exclusive permits, on a competitively neutral and non-discriminatory basis, allowing the longitudinal installation of underground fiber optic cable lines and related facilities within the rights-of-way of controlled-access highways on the state highway system and/or federal interstate highway system, subject to reasonable and appropriate regulations to protect the public safety and welfare.

(b) Notwithstanding any other provision of law to the contrary, as a prerequisite to the issuance of a permit under subsection (a), the Department of Transportation shall have the authority to require a one-time payment of fair and reasonable compensation for use of the right-of-way. This compensation shall be in addition to any administrative fees or charges the Department of Transportation may require for the issuance of a permit. The Department of Transportation shall receive this compensation as determined by the advisory board in accordance with subsection (d). Any compensation received is to be used by the department solely for constructing, operating and maintaining an "Intelligent Transportation System" and radio communications facilities for use by the state. As used in this section, "intelligent transportation system" means communications, computer and information systems and/or other technology utilized by the Department of Transportation to manage the flow of traffic on the controlled-access highways on the state highway system and/or federal interstate highway system.

(c) The Commissioner of the Department of Transportation shall have the authority to promulgate and enforce rules and regulations to carry out the provisions of this section, except for the setting of the rate of compensation. The rate of compensation shall be set by the advisory board established pursuant to subsection (d).

(d)(1) There is hereby created an advisory board to establish fair, reasonable and non-discriminatory compensation for the use of the right-of-way under this section. In determining the rate and method of such compensation, the board shall provide for the option, to be exercised at the discretion of the Department of Transportation, of payment of the compensation by the providing

of telecommunications facilities and services, and for a method of valuation of such in-kind payments. The advisory board shall consist of the Governor or his designee, the Commissioner of Finance and Administration, the Comptroller, the Treasurer, the Secretary of State, the Commissioner of the Department of Transportation, and three (3) representatives of the telecommunications industry. The Governor shall appoint one (1) telecommunication industry representative representing a facilities-based competing telecommunications services provider doing business in the state or a franchised cable company doing business in the state, the Speaker of the Senate shall appoint one (1) telecommunication industry representative representing an incumbent local exchange carrier doing business in the state, and the Speaker of the House of Representatives shall appoint one (1) telecommunication industry representative representing an inter-exchange carrier doing business in the state. To ensure that competitive interests are represented on the advisory board, the three (3) representatives of the telecommunications industry shall at no time be employed by or otherwise related to the same person or any affiliate of such person. In the event that a conflict arises under the preceding sentence because of a merger, acquisition or other transaction between two (2) or more persons within the telecommunications industry, then the appointing authorities of one or more of the affected representatives shall appoint different representatives to avoid such conflict. For purposes of this subdivision, "affiliate" means a person who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another person. The chairperson of the Tennessee Regulatory Authority shall be a non-voting member of the advisory board. A majority of voting members shall constitute a quorum at a board meeting. No vote may be taken unless a quorum is present. All decisions of the board shall be made by a majority vote of those members present and entitled to vote.

(2) In establishing the rate of fair and reasonable compensation for use of the right-of-way under this section, the advisory board shall consider all factors evidencing the value of use of the right-of-way, including but not limited to, savings on construction costs due to ease of installation in controlled-access highway rights-of-way, comparable rates charged for such access, amount of right-of-way available in certain locations and demand for certain locations. Information pertaining to these factors shall be presented to the advisory board by the Department of Transportation and any other interested parties.

(3) The advisory board shall meet within sixty (60) days of the effective date of this act to hear the information presented by the Department of Transportation and shall render its decision within one hundred twenty (120) days of the effective date of this act. The rate set shall be effective until the advisory board reconsiders the rate as provided in subdivision (4).

(4) Upon the request of the Department of Transportation or an applicant for a permit pursuant to subsection (a), the advisory board shall meet to consider a request to adjust the rate of compensation. Upon a showing that the current rate no longer reflects the value of access to the right-of-way, the board shall adjust the rate accordingly, provided that the rate shall not be adjusted more frequently than once every twelve (12) months.

(5) The Department of Transportation shall provide, upon request, any administrative assistance as shall be required by the advisory board.

(e) Nothing in this section or in any other provision of state law shall be construed to require the Department of Transportation to accommodate or permit

the longitudinal installation of any utilities other than underground fiber optic cable lines and related facilities as permitted under this section within the rights-of-way of controlled-access highways, except as the department may provide in its rules and regulations for accommodating facilities within highway rights-of-way.

(f) The provisions of this section apply only to the installation of underground fiber optic cable lines and related facilities within the rights-of-way on controlled access highways on the state highway and/or federal interstate highway system. Nothing in this section shall be construed as otherwise altering, amending or affecting the statutory, regulatory, and/or common law rights conferred to any telecommunications company to use the rights-of-way of any highways, county roads, city streets, or public lands of the state, including, but not limited to, those rights conferred by the Tennessee Code Annotated §§ 65-21-101 and 65-21-201.

(g) The use of compensation received under this section to offer and/or provide telecommunication services to the public for hire by the Department of Transportation or through any other governmental or business entity or business arrangement is hereby expressly prohibited.

(h) Notwithstanding any provision of law to the contrary, no underground fiber optic cable lines and related facilities located pursuant to the provisions of this act shall be used in whole or in part to detect or monitor misdemeanor traffic violations or to issue citations for misdemeanor traffic violations. For the purposes of this subsection, "misdemeanor traffic violations" means those traffic offenses punishable as Class C misdemeanors.

(i) The Department of Transportation shall, on an annual basis, file a report with the Clerk of each House of the General Assembly detailing the amount of compensation received for use of such rights-of-way, whether the compensation is in the form of money or telecommunications facilities and services or some combination thereof, and from whom the compensation was received. If the compensation is in the form of telecommunications facilities and services, the report shall detail the type of such facilities and services.

(j)(1) The Department of Transportation shall report annually to both Houses of the General Assembly as to the total amount of departmental funds, from any source, expended on intelligent transportation system projects during the previous fiscal year.

(2) Any compensation received by the Department of Transportation pursuant to this act that is not invested in the intelligent transportation system within five (5) fiscal years of the fiscal year of its receipt shall be transferred to the general fund.


SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 9, 2000

  
JIMMY RAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 23<sup>rd</sup> day of June 2000

  
DON CONQUIST, GOVERNOR